

REMARKS

This Letter is responsive to the Office Action of July 3, 2006. Favorable reconsideration of the rejections is respectfully requested in view of the remarks presented below and the evidence and conclusions presented in the Declaration of Dr. Jenö Muthiah (attached hereto as Exhibit A and hereinafter "Muthiah Declaration").

At the outset, Applicant acknowledges and confirms the June 9, 2006 provisional election to prosecute the invention embodied by claims 10-19, 23, and 24 that was made during a telephone conversation with the Examiner. After considering the reasons presented in the outstanding Office Action, Applicant hereby makes such election without traverse.

Please note that claims 10 and 15 were amended to correct the omission of the word "parts." Claims 23 and 24 were cancelled as being redundant to claims 18 and 19.

Claims 10-12 and 15-17 were rejected under 35 U.S.C. §102(b) as anticipated by the Daly et al. patent (hereinafter "Daly"). The Examiner presented a lengthy analysis regarding how the disclosure of Daly anticipates the claims. Despite such analysis, Applicant believes that one highly significant point of novelty is present in claims 10-12 and 15-17. Such point and the significance thereof are discussed extensively below.

A reading of Daly indicates that carboxylic acid functional polymers, such as polyester or acrylic, may be present with an epoxy. However, nowhere in Daly is it contemplated or disclosed that both of such carboxylic acid functional polymers are present together. Rather the sense of the Daly disclosure is that such polymers are alternative resins that may be combined with the epoxy. The use of the word "a" in the abstract, at column 1, lines 6-8, and at column 2, line 50 indicates that only a single carboxylic functional resin is contemplated for a given formulation. The Examiner's attention is also directed to column 2, lines 48-53 where the combination with the epoxy is described

as “a carboxylic acid functional polyester or a carboxylic acid functional acrylic resin” (emphasis added). Applicant has carefully read the disclosure at column 2, line 48 to column 3, line 8 where the Examiner indicated that “Daly discloses a curing coating powder for a heat-sensitive substrate comprising an epoxy resin and a carboxylic acid functional polyester and/or acrylic resin ...” (emphasis added) and finds that such disclosure simply does not support the Examiner’s underlined interpretation. Clearly the presence of the above-mentioned words “a” and “or” do not support the Examiner’s conclusion that Daly intended or suggested the concurrent presence of the resins. Moreover, no examples or claims are present which disclose or require the concurrent presence of both resins. Thus Applicant believes that a reasonable reading of the context of the Daly disclosure indicates to one skilled in the art that Daly did not contemplate or suggest the combination of a polyester and an acrylic resin with an epoxy in the coating powder of Daly.

In any event, the Examiner’s attention is also directed to the limitation contained in independent claims 10 and 15 requiring that the coating powder comprises a polyester resin and an acrylic resin in a specified range of weight ratios. More specifically, a weight ratio of between about 30 parts acrylic resin to about 70 parts polyester resin to about 70 parts acrylic resin to about 30 parts polyester resin is required. Daly does not disclose such weight ratio. The Examiner stated, “In Example 2, Daly discloses the powder comprising about a 2:1 ratio of polyester resin to epoxy/acrylic resin (Col 7).” Example 2 contains a carboxyl polyester and TGIC; but does not contain the claimed acid functional acrylic resin. Perhaps the Examiner intended to refer to Examples 3 or 4 of Daly. These Examples contain Ruco 911 (a polyester) and GMA 300 (an epoxy functional acrylic crosslinking agent). These Examples do not contain TGIC as a crosslinking agent as in the case for Example 2 because of the presence of GMA 300. GMA 300 does not function as a co-resin as in the case of the claimed acid functional acrylic resin and is epoxy functional rather

that acid functional. Hence, novelty is believed to be present for reasons set forth in this and the preceding paragraph. Applicant thus submits that the rejection of claims 10-12 and 15-17 under 35 U.S.C. §102(b) should be favorably reconsidered and withdrawn.

Applicant understands that a rejection of claims 10-12 and 15-17 over Daly under 35 U.S.C. §103 was not made by the Examiner. However, in the interest of expediting the prosecution of the instant application, Applicant desires to briefly demonstrate why any such rejection would be inappropriate to such claims and to claims 13, 14, 18, and 19 as well.

The Examiner's attention is directed to Samples 2 and 3 set forth at page 38 of the instant specification where the unexpected and unobvious advantages of using both an acid functional acrylic resin and a polyester resin in the claimed coating powder are demonstrated. Such advantages are further demonstrated in the Muthiah Declaration. While the Muthiah Declaration speaks for itself, Applicant again points out that the combination of a polyester and acrylic resin, as contrasted with the use of either a polyester or acrylic resin alone, leads to a highly desirable combination of properties. The cured coating powder of the invention exhibits much improved flexibility when compared with either resin. In addition, the cured coating powder of the invention may be cured much more rapidly when compared with the polyester resin, thereby ensuring commercial desirability. As the Examiner will appreciate, the inventive coating powder possesses a highly desirable combination of properties that is not possessed by either of the coating powders disclosed by Daly. It is submitted that the above-mentioned comparative results in the instant specification and in the Muthiah Declaration constitute compelling evidence of unexpected results and thus any rejection of claims 10-12 and 15-17 under obviousness would not be appropriate.

Claims 13, 14, 18, 19, 23, and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Daly. The Examiner considered that the inclusion of at least two epoxy crosslinking agents in

the claimed coating powder would be obvious because Daly disclosed that mixtures of polyester or acrylic resins may be used by Daly. The Examiner then used the aforementioned polyester and acrylic resin disclosure to imply that a mixture of epoxies could be obviously selected from the Daly list at column 5, lines 17-41 and that then more than one crosslinking agent would be used. Such reasoning amounts to the Examiner substituting opinion and speculation for disclosure that is missing in Daly. Such speculation is, of course, based upon Applicant's disclosure, not that of Daly and necessarily involves the use of impermissible hindsight. Moreover, no explanation was provided as to why one of ordinary skill in the art would select epoxy crosslinking agents having an epoxy functionality of about 2 to about 6 and an equivalent weight of from 100 to about 700 from the rather extensive list of Daly.

Daly has been fully discussed above in terms of novelty and obviousness and such remarks and evidence are believed to be likewise pertinent to this rejection and claims 13, 14, 18, and 19 should be likewise patentable. In any event, Applicant submits that the further claimed incorporation of at least two epoxy crosslinking agents having an epoxy functionality of about 2 to about 6 and an equivalent weight of from about 100 to about 700 into the coating powder of the present invention would not be obvious to one of ordinary skill in the art because no such incorporation is disclosed, suggested, or motivated by Daly. In addition, the incorporation of the claimed crosslinking agents results in a demonstrated further improvement in flexibility. In this regard, the Examiner is referred to Sample 4 on pages 37 and 38 of the instant specification and to the Muthiah Declaration. Such further improvement is regarded by Applicant as evidence of unexpected results and compels a finding of unobvious subject matter.

Based upon the remarks and evidence set forth above, Applicant believes that the subject matter of claims 10-19 is novel and would not be obvious to one of ordinary skill in the art. Consequently, favorable reconsideration of the rejection and issuance of a Notice of Allowance is respectfully requested.

Should the Examiner believe that any of the above issues could be resolved via a phone call, such phone call would be welcomed by the undersigned attorney.

Respectfully submitted,

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